

# CALIFORNIA TOBACCO RETAILERS FREQUENTLY ASKED QUESTIONS (FAQ) ABOUT TOBACCO LAWS

## **MINIMUM AGE OF SALE FOR TOBACCO PRODUCTS**

### **Q 1: What is the minimum age of sale for tobacco products in California?**

**A:** The minimum age of sale for tobacco products in California is 21. This is the minimum age of sale in all states, territories, and Tribal Jurisdictions in the United States. (Business & Profession Code Section 22952, Penal Code Section 308(a)(1)(A)(i), and 21 United States Code Section 387f(d))

### **Q 2: Is there an exemption for military personnel, younger than 21 years of age?**

**A:** No. The federal law set a minimum national standard for the legal age of tobacco sales. The federal minimum legal age of sale does not include exemptions for anyone under the age of 21. This law applies to all states, U.S. territories, and Tribal Jurisdictions. (21 United States Code Section 387f(d))

### **Q 3: What changes in federal minimum age of sale law affect the sale of tobacco products in California?**

**A:** On December 20, 2019, the federal minimum age of sale was raised to 21, with no exemptions. While the minimum age of sale in California was already 21, the federal law strengthens California law by raising the age of sale for active duty military personnel to 21. It also applies to tribal lands, raising the age of sale in all tribal jurisdictions to 21. This means that retailers in California are prohibited from selling, giving, or furnishing tobacco products to anyone under the age of 21, including active duty military personnel, in all parts of the state, including on tribal lands. (Business and Professions Code Section 22952, Penal Code Section 308(a)(1)(A)(i), and 21 United States Code Section 387f(d))

### **Q 4: Does the minimum tobacco age of sale (21) apply to tobacco sales on tribal lands in California?**

**A:** Yes. The federal law applies to all tribal jurisdictions in California, meaning that the age of sale for tobacco products on tribal lands is 21. (21 United States Code Section 387f(d))

### **Q 5: Does the federal minimum tobacco age of sale (21) apply to local jurisdictions that have an ordinance stating the minimum age of sale for tobacco products is 18 years of age?**

**A:** Yes. The federal minimum legal age of sale supersedes local ordinances and is the law in all states.

### **Q 6: What is the timeline for enforcement of the federal law, and will there be a grace period for compliance?**

**A:** The new federal legislation was enacted on December 20, 2019 and took effect immediately. Since 2016, the California Department of Public Health, Food and Drug Branch (FDB), Stop Tobacco Access to Kids Enforcement (STAKE) Program has enforced 21 as the legal age of tobacco sales in California pursuant to Business and Professions Code Section 22952. The Food and Drug Administration (FDA) is expected to publish federal enforcement regulations by September 2020.

**Q 7: What types of products are included in California’s minimum tobacco age of sale law?**

**A:** In California, a “tobacco product” is defined as a product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested. This includes traditional tobacco products such as cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, and snuff. “Tobacco product” also includes an electronic smoking device that delivers nicotine or other vaporized liquids to the person inhaling from the device such as an electronic cigarette, cigar, pipe, or hookah. Finally, the definition of “tobacco product” includes the components, parts and accessories of tobacco products, whether or not sold separately. (Business and Professions Code Section 22950.5)

**Q 8: Are tobacco cessation aid products included in the definition of “tobacco products”?**

**A:** No. “Tobacco product” does not include a product that has been approved by the FDA for sale as a tobacco cessation product or for other therapeutic purposes where the product is marketed and sold solely for such an approved purpose. (Business and Professions Code Section 22950.5).

**Q 9: Does California’s minimum age of sale requirement apply to the sale of shisha?**

**A:** Yes, if the product is made from or derived from tobacco or nicotine. Products that contain, or are made or derived from, tobacco or nicotine (e.g., cigarettes, cigars, shisha) are tobacco products that cannot be sold to anyone under 21 years of age. Herbal shisha that does not contain, made or derived from tobacco or nicotine is not a tobacco product and is therefore not subject to California or federal minimum age of sale laws for tobacco products (Business and Professions Code Section 22950.5(d))

**Q 10: Does California’s minimum age of sale requirement apply to non-nicotine e-liquids?**

**A:** It depends. If the e-liquid does not contain nicotine and is sold on its own then it is not considered a tobacco product and, therefore, there is no age requirement for the sale or furnishing of this product. However, if an e-liquid is sold in combination with an electronic device used to deliver any type of vaporized liquid, then the e-liquid is considered a tobacco product regardless of whether it contains nicotine. A tobacco product may not be sold, given or furnished to any person under the age of 21. (B&P Code Section 22950.5(d))

**Q 11: Is it illegal in California for someone buy tobacco and then give it to someone under the age of 21?**

**A:** Yes. It is against California law for a person to sell, give, or in any way furnish any tobacco product or tobacco paraphernalia to a person under the age of 21. Business and Professions Code Section 22952, Penal Code Section 308(a)(1)(A)(i))

## **MINIMUM AGE OF SMOKING AND POSSESSION**

### **Q 12: What is the minimum age to purchase, use or possess tobacco?**

**A:** California state law makes it illegal to sell, give, or furnish tobacco or tobacco paraphernalia to anyone under the age of 21, but does not make it illegal for a person to purchase, use or possess a tobacco product or paraphernalia. This means that under state law a person under the age of 21 may not be penalized for smoking or possessing tobacco or tobacco paraphernalia. (Business and Professions Code Section 22958(a)(1)). California state law decriminalized the purchase, use and possession of tobacco products to eliminate harassment of communities of color and others disproportionately burdened by police targeting and tobacco use.

### **Q 13: What is the minimum legal age to smoke tobacco-free and nicotine-free products?**

**A:** California state law prohibits the *sale or furnishing* of tobacco products to individuals younger than 21 years of age. California does not specify a minimum age for a person to smoke products with or without tobacco or nicotine. Federal law similarly prohibits *the sale* of tobacco products to anyone under the age of 21 and also does not specify a minimum age for a person to smoke products with or without nicotine. (Business and Professions Code Section 22952, Penal Code Section 308(a))

### **Q 14: Does the new federal age of sale law change the minimum age of possession to 21?**

**A:** No. While the new law raised the federal minimum age of sale to 21, the law does not penalize a person under the age of 21 for possessing tobacco. California state law similarly does not include language penalizing the possession of tobacco for a person of any age. (21 United States Code Section 387f(d), Business and Professions Code Section 22958(a)(1))

## **MINIMUM AGE OF ENTRY**

### **Q 15: May a person under the age of 21 enter an adult-only tobacco store?**

**A:** Yes, if they are over the age of 18 or accompanied by a parent or legal guardian. An adult-only tobacco store is a retail business that does not permit anyone under the age of 18 to be present or enter the premises at any time, unless accompanied by the person's parent or legal guardian. (Business and Professions Code Section 22962(a)(4)(C))

### **Q 16: May someone under the age of 21 enter a vape shop or hookah bar?**

**A:** Yes. There is no state or federal law that prohibits a person under the age of 21 from entering a vape shop or hookah bar. However, California law prohibits selling, giving, or in any way furnishing tobacco products or tobacco paraphernalia to anyone under the age of 21.

(Business and Professions Code Section 22958(a) and Section 22962(a)(4)(C), Penal Code Section 308(a))

**Q 17: If a tobacco retailer also sells non-tobacco items such as books, toys, and incense, may they allow individuals under 21 enter their store and can these individuals purchase these items?**

**A:** Yes. Individuals under 21 years of age can enter a retail store selling tobacco products and can purchase items that are not tobacco products. California's tobacco minimum age of sale requirement applies only to tobacco products. (Business and Professions Code Section 22958(a), Penal Code Section 308(a))

### **MINIMUM AGE OF CLERK, OWNER, AND MANUFACTURER**

**Q 18: Are clerks younger than 21 years of age permitted to sell tobacco products?**

**A:** It depends. California state law and federal law do not specify an age requirement for clerks to sell tobacco products; however, many local jurisdictions have laws about the minimum legal age of a clerk to sell tobacco products. Contact your [local health department](#) tobacco control program to find out if there is a specific age requirement for a clerk to sell tobacco products in your jurisdiction.

**Q 19: May tobacco retailers or wholesale business owners under 21 years of age obtain a state tobacco license from the California Department of Tax and Fee Administration (CDTFA)?**

**A:** Yes. There is no age requirement for obtaining a state license for the sale of cigarettes or tobacco products from CDTFA, which administers the licensing and tax collection requirements on tobacco businesses. For more information about licensing, visit the CDTFA cigarette and tobacco products licensing [webpage](#). For more information about tobacco product taxes, visit the CDTFA cigarette and tobacco product tax [webpage](#).

**Q 20: May employees manufacturing items such as vaporizers, pipes, and/or component parts be under 21 years of age?**

**A:** It depends. California state law and federal law does not specify an age requirement for employees to manufacture tobacco products, including components, parts, or accessories. However, many local jurisdictions have laws about the minimum legal age of a clerk to sell tobacco products. Contact your [local health department](#) tobacco control program to find out if there is a specific age requirement for a clerk to manufacture tobacco products in your jurisdiction.

### **AGE OF SALE WARNING SIGNS**

**Q 21: Are retailers required to post age of sale warning signs, which indicate the minimum age of sale for tobacco products?**

**A:** Yes. All tobacco retailers are required to post updated age-of-sale warning sign stating that selling tobacco products to anyone under 21 years of age is illegal and subject to penalties at each point of sale. These signs must reflect current state and federal laws. (California Code of Regulations Title 17 Division 1 Chapter 4 Section 6902(a), Business and Professions Code Section 22952(b), Penal Code Section 308(b), and 21 United States Code Section 387f(d))

**Q 22: Where can retailers obtain age-of-sale warning signs that are compliant with state law?**

**A:** Age-of- sale warning signs may be downloaded at:

<https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/Pages/Tobacco21.aspx>

Additionally, the website includes an order form for adhesive signs.

**Q 23: Were retailers notified of the change in the law?**

**A:** Yes. Materials to assist retailers with implementing the new law are posted to the California Department of Public Health Tobacco 21 (CDPH T-21) website.

<https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/Pages/Tobacco21.aspx> . Signage and implementation materials were mailed directly to licensed tobacco retailers in July 2020.

**Q 24: Were signage and implementation materials shipped to retailers?**

**A:** Yes. Age-of-sale warning signs and other educational materials were sent to tobacco retailers licensed with the State of California in July 2020 via the U.S. Post Office in an 8.5 X 11 envelope.

**Q 25: How many adhesive signs were sent to each retailer?**

**A:** Two adhesive-backed signs per tobacco retailer licensee were mailed.

**Q 26: If a retailer requests additional stickers or posters, will there be a fee?**

**A:** No. Age-of-sale adhesive signs are available free of [charge](#). Window clings are available while quantities last. Quantity limits and minimum shipping/handling charges may apply. Other materials may be downloaded free of charge.

**Q 27: Until updated official signage is received, what should be used?**

**A:** Retailers can download and print the updated signs

<https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/Pages/Tobacco21.aspx>. If retailers cannot print the signs themselves, they should continue to post the current age-of-sale adhesive signs until the updated signs are received.

**CHECKING IDENTIFICATION (ID)**

**Q 28: Do tobacco retailers need to check the ID of anyone purchasing a tobacco product, even if the person looks older than 21?**

**A:** Yes. Retailers must check the ID of anyone who looks younger than 27 years of age. (21 Code of Federal Regulations 1140.14(a)(2))

**Q 29: What is considered a valid ID under California law?**

**A:** A valid form of ID is any that is issued by a federal, state, county, or municipal government, or an agency thereof, such as a driver’s license, state identification card, passport, official naturalization or immigration document such as an alien registration receipt card (also known as a “green card”) or an immigrant visa, or military identification. (Business and Professions Code Section 22963(b)(1)(B))

## **PARAPHERNALIA, COMPONENTS, PARTS, AND ACCESSORIES**

**Q 30: May retailers sell tobacco paraphernalia to individuals younger than 21 years of age?**

**A:** No. Retailers may not sell tobacco paraphernalia to individuals younger than 21 years of age. “Tobacco paraphernalia” is defined as cigarette papers or wrappers, blunt wraps, pipes, holders of smoking materials of all types, cigarette rolling machines, or other instruments or things designed for the smoking or ingestion of tobacco products. (Business and Professions Code Section 22962 (a) (2) and Penal Code Section 308 (a))

**Q 31: May retailers sell a component, part or accessory of an electronic cigarette (such as an atomizer) to someone who is younger than 21?**

**A:** No. An atomizer is a component part of an electronic smoking device. Retailers may not sell components, parts or accessories of tobacco products, which include electronic smoking devices, to individuals younger than 21 years of age (Business and Professions Code Section 22950.5 (d)(1)(C) and 22952, Penal Code Section 308 (a) and 308 (f)).

**Q 32: May wire, metal, or cotton designed for use in atomizers be sold to people under 21 years of age?**

**A:** No. If the wire, metal, or cotton is designed for use in an atomizer, it is considered a tobacco product under state law, which includes components, parts and accessories of tobacco products, whether or not sold separately. Therefore, such products may not be sold to individuals younger than 21 years of age (Business and Professions Code Section 22950.5(d) and 22958(a), Penal Code Section 308(a) and 308(f)).

**Q 33: May retailers sell glass pipes or water pipes not labeled for tobacco use to individuals under 21 years of age?**

**A:** No. Water pipes and glass pipes are considered tobacco paraphernalia and may not be sold or furnished to individuals younger than 21 years of age (Business and Professions Code Section 22958(a), Penal Code Section 308(a)).

**Q 34: May retailers sell matches or lighters to someone who is 18 years of age?**

**A:** Yes. California law does not include a minimum age of sale for lighters or matches.

**Q 35: May retailers sell, give, rent, or furnish electronic smoking devices, hookah pipes, or other smoking equipment to individuals younger than 21 years of age?**

**A:** No. Retailers cannot sell, give, rent or furnish tobacco products or tobacco paraphernalia to individuals younger than 21 years of age. An electronic smoking device, even without any e-

liquid, falls under the definition of tobacco product. A hookah pipe or other smoking equipment is tobacco paraphernalia. (Business and Professions Code Section 22950.5(d) and 22958(a), Penal Code Section 308(a) and 308(f))

**Q 36: May individuals under 21 years of age bring in their own electronic smoking devices to a vape shop for repair?**

**A:** No. Retailers cannot sell, give, rent, or otherwise furnish tobacco products or tobacco paraphernalia to individuals younger than 21 years of age. An electronic smoking device, even without any e-liquid, falls under the definition of tobacco product. (Business and Professions Code Section 22950(d) and 22958(a), Penal Code Section 308(a) and 308(f))

## **SMOKING LOUNGES AND HOOKAH BARS**

**Q 37: Is smoking or vaping allowed in vape shops?**

**A:** No, unless the vape shop qualifies as either a retail or wholesale tobacco shop, or a private smokers' lounge. In California, it is against the law to smoke, including the use of electronic smoking devices, in an enclosed space at a place of employment or owner-operated business, with the exception of businesses that qualify as retail or wholesale tobacco shops or a private smokers' lounge. A "retail or wholesale tobacco shop" is defined as any business establishment whose main purpose is the sale of tobacco products, including electronic smoking devices, and a "private smokers' lounge" is defined as an enclosed area in or attached to a retail or wholesale tobacco shop that is dedicated to the use of tobacco products, including electronic smoking devices. Businesses that serve food or alcoholic beverages do not qualify for this exemption. (Labor Code Section 6404.5 and Cal. Att'y Gen. Op No.09-507)

**Q 38: May customers smoke inside a hookah lounge?**

**A:** It depends. California law permits smoking inside a hookah lounge if the business qualifies as either a "retail or wholesale tobacco shop" or a "private smokers' lounge" and does not serve food or beverages. A "retail or wholesale tobacco shop" is defined as any business establishment whose main purpose is the sale of tobacco products, and a "private smokers' lounge" is defined as an enclosed area in or attached to a "retail or wholesale tobacco shop" that is dedicated to the use of tobacco products. (Labor Code Section 6404.5 and Cal. Att'y Gen. Op No.09-507)

**Q 39: May food or alcohol be served at a hookah lounge?**

**A:** No. A hookah lounge that serves food or beverages may not allow customers of any age to smoke inside the lounge. (Labor Code Section 6404.5 and Cal. Att'y Gen. Op No.09-507)

**Q 40: May a smoking lounge separate individuals under 21 years of age and individuals 21 years of age and older by keeping them on two separate floors, or by identifying age with wristbands?**

**A:** Yes. There is no law in California or a federal law that prohibits individuals under the age of 21 from entering a hookah bar or smokers' lounge. However, smoking is not allowed inside a lounge unless it meets the definition of a wholesale tobacco shop or private smokers' lounge.

Additionally, it is a crime to sell, give or in any way furnish tobacco products or tobacco paraphernalia to anyone under the age of 21. (Labor Code Section 6404.5, Business & Profession Code Section 22952, Penal Code Section 308)

**Q 41: May a retailer sell non-tobacco herbs, including herbal shisha, to individuals under the age of 21?**

**A:** Yes. Herbal or other plant products intended for hookah smoking which do not contain, and are not made or derived from, tobacco or nicotine (e.g., herbal shisha that do not contain tobacco or nicotine), are not tobacco products and are therefore not subject to California or federal minimum age of sale laws for tobacco products. A tobacco product is defined as: 1) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, 2) any electronic smoking device (whether or not it contains nicotine), or 3) any component, part, or accessory of a tobacco product, whether or not sold separately. There are no age restrictions for purchasing non-tobacco herbal shisha. (Business and Professions Code Section 22958(a) and Section 22950.5(d), Penal Code Section 308(a))

**Q 42: If a hookah lounge only sells herbal molasses and/or non-tobacco shisha, may a person under 21 years of age smoke it inside the lounge?**

**A:** No. In order to allow smoking within a hookah lounge, the lounge must meet the definition of a private smokers' lounge or a wholesale or retail tobacco shop. A "private smokers' lounge" is defined as an enclosed area in or attached to a "retail or wholesale tobacco shop" that is dedicated to the use of tobacco products, including, but not limited to, cigars and pipes. A hookah lounge that sells only herbal molasses and/or non-tobacco shisha does not meet either definition because the establishment is not selling tobacco products, and therefore, may not permit anyone of any age to smoke in the establishment. (Labor Code Section 6404.5(e)(2)(A))

**Q 43: May a hookah lounge provide a hookah pipe for someone under the age of 21 to smoke herbal molasses and/or non-tobacco shisha?**

**A:** No. California law prohibits selling, giving or in any way furnishing tobacco paraphernalia to anyone under 21 years of age. Even if a hookah pipe is used to smoke non-tobacco shisha, it is still considered tobacco paraphernalia designed for smoking tobacco (e.g., shisha), and therefore cannot be sold to or given to anyone under the age of 21 for any type of use. (Business and Professions Code Section 22958(a), Penal Code Section 308)

**Q 44: May a 21 year old purchase shisha and share it with 18 – 20 year olds in a hookah lounge?**

**A:** No. California law prohibits selling, giving, or in any way furnishing tobacco products to a person under 21 years of age. Hookah tobacco is considered a tobacco product and may therefore not be sold or given to anyone under 21 years of age, whether it be given by a retailer or another customer. (Penal Code Section 308, Business and Professions Code Section 22958(a) and 22950.5)



## **SELF-SERVICE DISPLAYS**

### **Q 45: May retailers have self-service displays for electronic smoking devices?**

**A:** No. Retailers cannot have self-service displays for most tobacco products (including electronic smoking devices, e-liquids, components, parts or accessories). A self-service display is any display that allows customers to access items without help from the retailer. Cigars, pipe tobacco, snuff, chewing tobacco, and dipping tobacco may be sold in self-service displays only in “tobacco stores” under certain circumstances. (Business and Professions Code Section 22962).

### **Q 46: May retailers have self-service displays for cigars?**

**A:** No, unless the cigars are available for sale at a tobacco store and meet specific packaging and quantity requirements. To qualify as a “tobacco store” for this purpose, the retailer must meet all of the following requirements:

1. Primarily sell tobacco products,
2. Generate more than 60% of its gross annual revenue from the sale of tobacco products and tobacco paraphernalia,
3. Not sell alcohol or food for consumption on the premises, and
4. Prohibit anyone younger than 18 years of age from entering unless that person is accompanied by his or her parent or legal guardian (Business and Professions Code Section 22962 (a)(4)).

In “tobacco stores”, only the following cigars are permitted for self-service display:

- Single, unwrapped cigars;
- Single, individually wrapped cigars only if they are sold from the manufacturer’s original box, bundle, or other container;
- Multiple cigars only if they are not in a sealed box, bundle, tin, or multiple-pack container;
- Multiple cigars in sealed boxes, bundles, tins, or multiple-pack containers only if they contain at least 6 cigars.

Aside from these exceptions, self-service displays of tobacco products and paraphernalia are not permitted in retail businesses. In all other businesses that do not qualify as a “tobacco store”, the self-service display of all tobacco products is prohibited. (Business and Professions Code Section 22962)

## **SAMPLING**

### **Q 47: May retailers give out free samples of tobacco products?**

**A:** No, except for qualified adult only facilities providing free samples of smokeless tobacco. Federal regulations prohibit the distribution of free samples of tobacco products, including all components or parts that are meant to be used with tobacco product. An exception to this law is for the distribution of free samples of smokeless tobacco, and in a qualified adult only facility. (21 Code of Federal Regulations, Section 1140.16 (d)(2))

**Q 48:** May retailers give out free samples of e-liquid with or without nicotine?

**A:** No. Federal regulations prohibit the distribution of free samples of tobacco products; this includes e-liquids and all components and parts that are meant to be used with or for the consumption of that e-liquid. Even if a product is advertised as having no tobacco but has nicotine, it is still considered a tobacco product since nicotine is derived from tobacco. If an e-liquid does not contain nicotine, it may still be considered a component or part if it alters the performance, composition, constituents, or characteristics of a tobacco product and may therefore not be distributed as a free sample. (21 Code of Federal Regulations, Section 1140.16 (d))

## **TOBACCO LICENSING AND FEES**

**Q 49: How much does a tobacco retail license cost in California?**

**A:** To sell tobacco products in California, a retailer must obtain a California Cigarette and Tobacco Products Retailer License and pay an annual fee of \$265. Local governments may require additional local licensing fees in addition to the annual state license fee of \$265. Contact your [local health department](#) to find out if there are local tobacco licensing fees in your jurisdiction.

**Q 50: How do I apply for a state tobacco retail license?**

**A:** California state tobacco retail licenses are administered by the California Department of Tax and Fee Administration (CDTFA). For more information on the process or to apply for a tobacco retail license, please visit the [CDTFA website](#) or call 1-800-400-7115 (select the “Cigarette and Tobacco Products” option).

**Q 51: If a jurisdiction requires a local licensing fee for a local Tobacco Retailer License to sell tobacco products in that jurisdiction, do tobacco retailers have to pay their local licensing fee or the state licensing fee?**

**A:** Both. All tobacco retailers are required by state law to have a state tobacco retailer license. If a local jurisdiction has a tobacco retailer license ordinance, retailers in that jurisdiction are also required to have a local tobacco retail license. For more information on tobacco retail licensing laws in your jurisdiction, contact your [local health department](#) tobacco control program.

**Q 52: Do retailers need a state tobacco retailer license if they only sell herbal or other plant products, and none of the products contain, or are made or derived from tobacco or contain nicotine (e.g., herbal cigarettes or herbal shishas that do not contain tobacco or nicotine)?**

**A:** It depends. Products (other than those listed below) that do not contain, or are not made or derived from, tobacco or nicotine, do not require a state tobacco retailer license to sell. However, retailers are required to have a state tobacco retailer license to sell 1) products used for electronic smoking devices (e.g., e-liquids) even if they do not contain nicotine or tobacco, 2) any delivery device or system not sold in combination with any liquid or substance containing

nicotine, 3) any battery, battery charger, carrying case, or any other accessory not sold in combination with nicotine. (Business and Professions Code Section 22972).

**Q 53: Are wholesalers, distributors, manufacturers and importers required to have a license to sell tobacco products?**

**A:** Yes. Every wholesaler, distributor, manufacturer and importer is required to obtain and maintain a license to sell tobacco products. Licenses for these businesses are administered by the California Department of Tax and Fee Administration (CDTFA). For more information on the process to apply for a license, please visit the [CDTFA website](#) or call 1-800-400-7115 (select the “Cigarette and Tobacco Products” option).

**Q 54: If retailers only sell electronic smoking devices (like electronic cigarettes), do they need a tobacco retail license?**

**A:** Yes. Effective January 1, 2017, retailers who only sell electronic smoking devices in California, such as vape shops, are required to have a tobacco retail license. For more information, please visit the [CDTFA website](#) or call 1-800-400-7115 (select the “Cigarette and Tobacco Products” option) (B&P Code Section 22973.3).

**ONLINE SALES**

**Q 55: Can someone under the age of 21 purchase tobacco products online?**

**A:** No. The sale or distribution of tobacco products, including online sales, is prohibited to anyone under the age of 21 years. California law requires strict age verification guidelines for retailers selling tobacco products online.

1. A retailer must first verify that a customer who has ordered a tobacco product either online, by phone, or through the mail is at least 21 years old. This can be done by confirming that the customer’s name and birth date match information contained in a database of individuals verified to be 21 or older. If the seller cannot confirm this information through the database, the customer must submit a signed attestation that he or she is older than 21 along with a valid form of government ID (see question 58 for more details on what is considered a valid form of government ID).
2. Once the customer’s age is verified, he or she must pay for the tobacco product using a personal check or credit card.
3. The seller must call the customer after 5p.m. to confirm the order prior to shipping the tobacco product.
4. The tobacco product must be delivered to the customer’s verified billing address listed on the check or credit card used for payment. A customer may designate an alternative address for delivery if his or her mailing address has been correctly verified. A tobacco product may not be delivered to any post office box.
5. The tobacco product must be delivered in a container that is conspicuously labeled with the words: “CONTAINS TOBACCO PRODUCTS: SIGNATURE OF PERSON 21 YEARS OF AGE OR OLDER REQUIRED FOR DELIVERY.”
6. Upon the delivery of the tobacco product to the recipient’s or purchaser’s address, the seller, distributor, or nonsale distributor must obtain the signature of a person 21 years

of age or older before completing the delivery. (Business & Profession Code Section 22963 and Penal Code Section 308(a)(1)(A)(i))

**Q 56: May military personnel at least 18 years of age legally purchase tobacco products online?**

**A:** No. The sale of tobacco products to anyone under 21 years of age, including military personnel, is prohibited in the United States. (21 United States Code Section 387f(d))

**Q 57: If someone younger than 21 is able to order a tobacco product online with the assistance of someone who is 21 or over, are there any other mechanisms in place to restrict youth access to tobacco products?**

**A:** Yes. In 2019, SB 39 (Chapter 295, 2019) was signed into law, which required that a tobacco product be delivered in a container with a label stating that the package contains a tobacco product and that the signature of a person 21 years of age or older is required for delivery. Upon delivery of the tobacco product at the recipient or purchaser's address, the seller, distributor or nonsale distributor must obtain the signature of a person 21 years or older before completing the delivery. (Business and Professions Code Section 22963(b)(5) and (6))

**Q 58: For online sales or orders placed by mail, telephone, or fax, how can retailers verify the age of customers?**

**A:** There are two options retailers may choose for age verification. The first option is to match the name, address, and date of birth provided by the customer to information contained in a database of individuals verified to be 21 or older. The second option is to require the customer to submit a signed attestation that he or she is older than 21 and a copy of a valid form of government ID. A valid form of government ID includes a driver's license, state identification card, passport, or an official green card, immigrant visa, or military ID. (Business and Professions Code Section 22963(b))

**Q 59: For online purchases, are customers (including businesses) required to have the same address on their credit card as the delivery address?**

**A:** Yes. Tobacco products purchased online must be delivered to the purchaser's verified billing address on the check or credit card used for payment. (Business and Professions Code 22963(b)(1)(A), 22963(b)(1)(B) and 22963(b)(4))

## **ENFORCEMENT AND VIOLATIONS**

**Q 60: Who enforces California's minimum age of sale law?**

**A:** The California Department of Public Health, Food and Drug Branch, STAKE Program has the primary responsibility to enforce California's minimum age of tobacco sales law. In addition, another enforcing agency, such as a local enforcement agency including city attorney, district attorney, or county counsel, may conduct inspections and assess penalties for violations. (Business and Profession Code Sections 22950.5 (b), 22952(c), and 22957) Additionally, any local law enforcement agencies have received [enforcement grants](#) from the California

Department of Justice as a result of Proposition 56, the California Healthcare, Research and Prevention Tobacco Tax Act of 2016.

**Q 61: Will inspections occur to determine whether California retailers are complying with age of sale laws?**

**A:** Yes. The California Food and Drug Branch is required to conduct random, onsite inspections at tobacco retail locations with the assistance of persons under the age of 21 to ensure that retailers and their associates comply with California law. State and local enforcement agencies are also authorized to conduct enforcement activities. (Business and Professions Code Section 22952)

**Q 62: How will the federal minimum age of sale law be enforced in addition to California’s law?**

**A:** The Federal Food and Drug Agency (FDA) is authorized to enforce the federal minimum tobacco age of sale law in California. The FDA will continue to conduct inspections of tobacco product retailers to determine a compliance with federal laws and regulations. The FDA has until September 15, 2020 to begin enforcing the changes to federal law once the new rules are updated and published. (Family Smoking Prevention and Tobacco Control Act Section 103(q)(2)(A))

**Q 63: What are the fines and penalties for selling tobacco products to persons under 21 years of age?**

**A:** Tobacco retailers who violate the minimum tobacco age of sale law are subject to the following civil and criminal penalties under Penal Code Section 308 (a), and civil penalties under Business and Professions Code Section 22958.

Penal Code Section 308 (a)		Business and Professions Code Section 22958	
Effective Date	June 9, 2016	June 9, 2016	
Type of Penalty	Criminal or Civil Penalty	Civil Penalty	Additional Penalties
First violation	\$200	\$400 – \$600	
Second violation	\$500	\$900 – \$1000 (for second violation within 5-year period)	
Third violation	\$1,000	\$1,200 – \$1,800 (for third violation within 5-year period)	45-day license suspension (for a third violation at the same location within a five-year period)
Fourth violation	Not Specified	\$3,000 – \$4,000 (for fourth violation within 5-year period)	90-day license suspension (for a fourth violation at

			the same location within a five-year period)
Fifth violation	Not Specified	\$5,000 – \$6,000 (for fifth violation within 5-year period)	License revocation (for a fifth violation at the same location within a five-year period)

Additionally, fines and penalties for violations of the federal age of sale law may range from \$297 to \$11,904 and may include a tobacco license suspension or revocation (Family Smoking Prevention and Tobacco Control Act Section 103(q)(2)(A))

**Q 64: What are the penalties for not posting the required age of sale warning sign at each point of purchase?**

**A:** Tobacco retailers who do not post the required age of sale warning sign as required are subject to a civil penalty of \$200 for the first offense and \$500 for each additional violation per location. (Business and Professions Code Section 22958(e))

**Q 65: If retailers train their employees on the new law and employees sign a document that indicates they were trained, will the business owner be liable if an employee sells, gives, or furnishes tobacco products to individuals under 21 years of age?**

**A:** Yes. The STAKE Act authorizes enforcing agencies to assess civil penalties against the owner or owners of the retail business and not the employees of the business (Business and Professions Code Section 22958(a) & 22952 (f))

**Q 66: How do I report an unlawful tobacco sale?**

**A.** Call 1-800-5 ASK-4-ID or 1-800-527-5443 or scan QR code.

